IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8809 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE B.S.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAJIDKHAN ALIAS GHODO GANIKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MR AR SHAIKH for Petitioner No. 1

Mr.M.K. Patel, Assistant GOVERNMENT PLEADER, for the Respondents.

CORAM : MR.JUSTICE B.S.KAPADIA

Date of decision: 19/02/2003

ORAL JUDGEMENT

The petitioner has challenged, by filing this petition, his detention order dated 27.6.2002. By the impugned order, the petitioner is detained as a "Dangerous Person" under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA", for short). In the detention order, there is a reference

of two cases. Particulars of the same are also given in the grounds of detention, which was given along with the detention order. All these cases are registered vide Guna Register Nos. I 76 of 2002 and I 132 of 2002, at the Vadodara City Police Station. The said cases are filed for offences punishable under Sections 143, 147, 148, 149, 336, 353, 385, 435, 436 and 188 of IPC, read with Section 135 of the B.P. Act. It is alleged against the petitioner that the petitioner is a "dangerous person" and he is keeping iron pipes and carries them with him and that he is a communal minded person. It is not in dispute that, at the relevant time, the petitioner was in judicial custody. However, the authority mentioned that he may be released on bail at any time and, thereafter, he may continue the dangerous activities. The said detention order is challenged in this petition.

The learned Advocate for the petitioner submitted that even though the aforesaid criminal cases are of March, 2002, the detention order is passed practically after a period of three months on 27th June, 2002. It is also submitted that the detaining authority has not properly applied its mind as to why he is required to be detained by way of preventive detention even though the petitioner is in judicial custody at the time when the detention order is passed.

The learned Advocate for the petitioner has placed reliance on the decision of the Apex Court in Amritlal & Others v. Union Government and others, AIR 2000 SC 3675. In the aforesaid decision, the Apex Court held as under :-

> " ... ...
>
> 4. In Augustin's decision (1994 Supp (1) SCC 597) (supra) this Court also placed strong reliance on an earlier but oft-cited decision of this Court in Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416 : (AIR 1986 SC 2090 : 1986 Cri LJ 1959) wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be

released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of the concerned officer in the matter under reference ought to be noticed and the same reads as below:-

> "Even though prosecution proceedings under Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri Amritlal I am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988."

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6. The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090 : 1986 Cri LJ 1959) (supra) that there is 'likelihood of the petitioners being released on bail' that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the 'likelihood of his moving an application for bail' which is different from 'likelihood to be released on bail.' This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

7. The emphasis however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material

is the likelihood of having a bail application moved in the matter but not obtaining a bail order.

... ..."

In my view, it is clear that the the detaining authority has not properly applied its mind as to how he has reached satisfaction that the petitioner is required to be detained by way of preventive detention even though the petitioner is in judicial custody at the time when the detention order was passed. In view of the judgment of the Apex Court referred above, this petition is required to be allowed.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless he is required in connection with any other case. Rule is made absolute.

19th February, 2003 (P.B. Majmudar, J.)

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(apj)